

**A RESOLUTION
BY CITY UTILITIES COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO INTERGOVERNMENTAL COST SHARING AGREEMENT FOR TECHNICAL ASSISTANCE TO ACCEPT TRANSFER OF FUNDS COLLECTED UNDER AGREEMENT FOR RIVER/LAKE MANAGEMENT SERVICES; TO EXTEND THE TERM OF THE INTERGOVERNMENTAL COST SHARING AGREEMENT FOR TECHNICAL ASSISTANCE; AND FOR OTHER PURPOSES.

WHEREAS, the Participants first entered into an agreement with the Atlanta Regional Commission ("ARC") in 1992 for certain professional services for the Participants; and

WHEREAS, on or about January 1, 2007, ARC, the City and , and the other Participants entered the Intergovernmental Cost Sharing Agreement for Technical Assistance (the "Technical Assistance Agreement"), the purpose of which is to allocate responsibilities and funding among the parties in connection with the dispute over respective water rights among the states of Alabama, Florida, and Georgia; and

WHEREAS, the City was authorized to enter the Technical Assistance Agreement by 06-R-2415, and the second year of funding was authorized by 09-R-0010; and

WHEREAS, ARC, the City and the other Participants are also parties to the Agreement for River/Lake Management Services effective January 1, 2001, (the "Service Agreement"), which agreement was amended effective January 1, 2003 (the "First Amendment"), and was further amended effective July 1, 2005 (the "Second Amendment"); and

WHEREAS, the Service Agreement is being further amended simultaneously with the date hereof (the "Third Amendment") to authorize the transfer of certain funds held by ARC under the Service Agreement into the account maintained by ARC under the Technical Assistance Agreement (the "Technical Assistance Account"); and

WHEREAS, the City and the other Participants deem it in their individual and collective best interests to authorize ARC to accept such funds to be used to further the purposes and objectives of the Technical Assistance Agreement; and

WHEREAS, ARC, the City and the other Participants deem it in their individual and collective best interests to extend the term of the Technical Assistance Agreement until all funds are expended.

THE CITY COUNCIL FOR THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES, that the Mayor is authorized to enter into the First Amendment of the Technical Assistance Agreement to accept transfer of all remaining funds collected under

the Service Agreement and to extend the term of the Technical Assistance Agreement until all funds are expended.

BE IT FURTHER RESOLVED, that Atlanta Fulton County Water Resources Commission ("AFCWRC") is authorized to enter into First Amendment of the Technical Assistance Agreement to accept transfer of funds collected under the Service Agreement and to extend the term of the Technical Assistance Agreement until all funds are expended.

BE IT FURTHER RESOLVED, that the City Attorney is directed to prepare an appropriate Agreement, substantially in the form of the draft Agreement attached as Exhibit "A," for execution by the Mayor.

BE IT FINALLY RESOLVED, that the Agreement will not become binding on the City and the City will incur no obligation nor liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to ARC.

2. The Participants acknowledge that Paragraph 4 of the Technical Assistance Agreement requires that the Participants share the costs on an equal basis. The Participants recognize that the funds being transferred from the Service Agreement represent varying amounts attributable to each Participant on account of the fact that such funds include variable payments made by the Participants for excess water withdrawals, as more particularly described in the Third Amendment. ARC is hereby directed to take same into account and to invoice each Participant at such time as the next installment comes due under the Technical Assistance Agreement in a manner such that, after such installment has been paid, all Participants will have contributed equal amounts as required by Paragraph 4. If for any reason no further installments are required, then at such time as the Technical Account Account is closed, the remaining balance therein shall be distributed to the Participants in amounts which will equalize the cumulative payments made by each Participant from the inception of the Technical Assistance Agreement. The transfer of funds described hereinabove shall be accomplished by no later than December 31, 2009.

3. The first sentence of Paragraph 5 of the Technical Assistance Agreement, entitled Term, is hereby deleted in its entirety and replaced with the following: "This agreement shall become effective as of the date first written above and shall continue in full force and effect until all funds are expended."

4. Except as herein modified or amended, the terms and conditions of the Technical Assistance Agreement are hereby reaffirmed and ratified and shall remain in full force and effect.

5. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the date first above written.

Counterpart 1 of 5 to Technical Assistance Agreement.

ATLANTA REGIONAL COMMISSION

Attest:

Director

Chair

Counterpart 2 of 5 to Technical Assistance Agreement.

Witness:

CITY OF ATLANTA

Municipal Clerk

Shirley Franklin, Mayor (Seal)

Approved as to Form:

Recommended:

City Attorney

Commissioner, Department of
Watershed Management

Approved:

Chief Financial Officer

Chief Operating Officer

Counterpart 3 of 5 to Technical Assistance Agreement.

COBB COUNTY-MARIETTA WATER AUTHORITY

Chairman

Approved as to form:

Attest:

Attorney

Title

Counterpart 4 of 5 to Technical Assistance Agreement.

DEKALB COUNTY, GEORGIA

Burrell Ellis
Chief Executive Officer (Seal)
DeKalb County, Georgia

ATTESTED:

Barbara Sanders
Clerk of the
Chief Executive Officer
and Board of Commissioners
of DeKalb County, Georgia

Approved as to Substance:

Approved as to Form:

Director

Asst. County Attorney

Counterpart 5 of 5 to Technical Assistance Agreement.

ATLANTA-FULTON COUNTY WATER
RESOURCES COMMISSION

Chairman

Approved as to Form:

ATTEST:

AFCWRC Attorney

Approved as to Content:

ATTEST:

General Manager

Notary Public (Seal)

My commission expires: _____

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: _____ Maisha L. Wood _____

Contact Number: _____ (404) 330-6887 _____

Originating Department: _____ Department of Watershed Management _____
Committee(s) of Purview: _____ City Utilities Committee _____

Chief of Staff Deadline: _____ November 17, 2009 _____

Anticipated Committee Meeting Date(s): _____ December 1, 2009 _____

Anticipated Full Council Date: _____ December 7, 2009 _____

Legislative Counsel's Signature: _____  _____

Commissioner Signature: _____ Robert J. Hunter & P _____

Chief Procurement Officer Signature: _____ n/a _____

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO INTERGOVERNMENTAL COST SHARING AGREEMENT FOR TECHNICAL ASSISTANCE TO ACCEPT TRANSFER OF FUNDS COLLECTED UNDER AGREEMENT FOR RIVER/LAKE MANAGEMENT SERVICES; TO EXTEND THE TERM OF THE INTERGOVERNMENTAL COST SHARING AGREEMENT FOR TECHNICAL ASSISTANCE; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any): n/a

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office: _____ 11/17/09 _____
(date) (date)

Submitted to Council: _____ (date)

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities Committee

Caption: A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FIRST AMENDMENT TO INTERGOVERNMENTAL COST SHARING AGREEMENT FOR TECHNICAL ASSISTANCE TO ACCEPT TRANSFER OF FUNDS COLLECTED UNDER AGREEMENT FOR RIVER/LAKE MANAGEMENT SERVICES; TO EXTEND THE TERM OF THE INTERGOVERNMENTAL COST SHARING AGREEMENT FOR TECHNICAL ASSISTANCE; AND FOR OTHER PURPOSES.

Council Meeting Date: December 7, 2009

Requesting Dept.: Department of Watershed Management

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.

The purpose of this legislation is to authorize the transfer of funds from one account administered by the Atlanta Regional Commission (ARC) for management services to another account administered by the ARC for technical assistance. The account from which funds are being transferred is the Pre-Contract Account established by ARC under the Agreement for River/Lake Management Services which has since been nullified by the U.S Court of Appeals, District of Columbia Circuit. The recipient account is the Technical Assistance Account established by ARC under the Intergovernmental Cost Sharing Agreement for Technical Assistance on matters related to the Tri-State Water Rights Litigation and related negotiations and other activities.

2. Please provide background information regarding this legislation.

ARC needs additional monies to fund technical assistance activities related to the Tri-State Water Rights Litigation and related negotiations and other activities for the time period December 1, 2009 – June 30, 2010. Because ARC has already collected funds under the Agreement for River/Lake Management Services that has since been nullified by U.S Court of Appeals, District of Columbia Circuit, it is in the best interests of the City to simply transfer monies into the Technical Assistance Account under the Intergovernmental Cost Sharing Agreement for Technical Assistance and this First Amendment of Intergovernmental Cost Sharing Agreement for Technical Assistance.

3. If Applicable/Known:

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** Intergovernmental Agreement

(b) **Source Selection:**

(c) **Bids/Proposals Due:**

(d) **Invitations Issued:**

(e) **Number of Bids:**

(f) **Proposals Received:**

(g) **Bidders/Proponents:**

(h) **Term of Contract:** Approximately seven months.

4. Fund Account Center (Ex. Name and number): N/A

Fund: _____ **Account:** _____ **Center:** _____

5. Source of Funds: Example: Local Assistance Grant : Original source of funds was Water and Wastewater Revenue Fund. However no new funds will be collected from the City to implement this amendment to an intergovernmental agreement.

6. Fiscal Impact: No new funds will be needed to implement this amendment to an intergovernmental agreement.

7. Method of Cost Recovery:

This Legislative Request Form Was Prepared By: Marc Goncher, Senior Assistant City Attorney